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 Entertainment, Inc. and Defendant and  
 Counter-Claimant Ticketmaster LLC*

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION JUDICIAL DISTRICT

Complete Entertainment Resources LLC  
 d/b/a Songkick,

Plaintiff,

v.

Live Nation Entertainment, Inc.;  
 Ticketmaster LLC,

Defendants.

Ticketmaster LLC,

Counter Claimant,

v.

Complete Entertainment Resources LLC  
 d/b/a Songkick,

Counter Defendant.

CASE NO. 2:15-CV-09814 DSF  
 (AGRx)

**DECLARATION OF MIKE  
 SCHMITT**

The Honorable Dale S. Fischer

Date: August 7, 2017

Time: 1:30 p.m.

Place: Courtroom 7D

**REDACTED VERSION  
 OF DOCUMENT PROPOSED TO  
 BE FILED UNDER SEAL**

1 I, Mike Schmitt, declare as follows:

2 1. I am currently the Senior Director of Tour Execution for  
3 Ticketmaster. I make this declaration based on personal, firsthand knowledge, and  
4 if called and sworn as a witness, I could and would testify competently thereto.

5 2. Except for a brief, seven month stint at Tickets.com in 2010, I have  
6 worked at Ticketmaster since 1993. My prior positions at Ticketmaster include  
7 Senior Director of Client Services (2002-2010), Client Services Manager (1998-  
8 2002), Client Services Representative (1995-1998), and PCI Coordinator (1993-  
9 1995). I have been in my current position, as the Senior Director of Tour  
10 Execution for more than six years, since 2011. My duties as Senior Director of  
11 Tour Execution include, among other things, applying and enforcing  
12 Ticketmaster's fan club policy to third party (i.e., "off-platform") artist presales,  
13 and determining whether, under Ticketmaster's policy, the artist has a qualifying  
14 fan club, and whether the presale otherwise complies with the terms of the policy,  
15 such that the presale can go forward on the third party's platform. In applying  
16 Ticketmaster's fan club policy, I frequently communicate with venues and artist  
17 representatives, including managers, agents, and promoters. On occasion, that  
18 means informing venues and artist representatives that a given artist does not have  
19 a qualifying fan club under Ticketmaster's policy.

20 3. It is my understanding that the origins of Ticketmaster's fan club  
21 policy trace back to the 1990s. Sometime in the 1990s, the managers for certain  
22 popular, well-known bands approached Ticketmaster, seeking to sell some of the  
23 tickets to their shows at Ticketmaster venues directly to their most devoted, core  
24 fans—to their member-based fan clubs. Ticketmaster possessed the exclusive right  
25 to distribute these tickets, by virtue of its contracts with venues. Nevertheless,  
26 Ticketmaster recognized the importance of the artist-fan relationship, which lies at  
27 the heart of the live music industry, and wanted to foster the relationship between  
28 artists and their member-based fan clubs. To that end, Ticketmaster decided to

1 accommodate these requests to a limited extent, under certain circumstances, and  
2 so created what has become known as the “fan club policy.” Pursuant to the fan  
3 club policy, Ticketmaster would provide artists a selection of tickets to sell to  
4 members of their fan clubs (typically via mail order, in the early days, and then  
5 moving to online sales) before the general onsale—i.e., before tickets went on sale  
6 to the general public. In so doing, Ticketmaster did not agree to waive its  
7 exclusive ticketing rights for the benefit of any artist who wanted to conduct any  
8 presale. Rather, under the fan club policy, Ticketmaster would voluntarily waive  
9 its exclusive rights only for artists who had genuine, *bona fide* fan clubs, in  
10 Ticketmaster’s view. Ticketmaster eventually created a written version of its fan  
11 club policy which describes the specific circumstances under which Ticketmaster  
12 will allow an artist to sell presale tickets directly to fans notwithstanding  
13 Ticketmaster’s exclusive distribution rights.

14 4. The fan club policy is intended to identify a *bona fide* fan club, whose  
15 existence in Ticketmaster’s view is neither dependent upon nor principally a means  
16 of selling tickets, but rather exists primarily to allow artists to maintain ongoing  
17 connections to their most ardent fans. The policy is not about helping competing  
18 ticketing services; it’s about helping artists cultivate a connection with their fans,  
19 by providing them a perk that is not available to the general public. Most of the  
20 fan club guidance is thus intended to ensure that the fan club provides for  
21 meaningful, ongoing interaction between an artist and its fans that goes beyond  
22 merely making tickets available. Examples of such interaction might include  
23 special content (an artist journal, exclusive photos, downloads, etc.), early access  
24 to the artist’s content (music and videos), the sale of artist-related merchandise,  
25 meetups among members of the community, or the publication and distribution of  
26 artist newsletters—i.e., elements designed to create a community among fans, and  
27 to spur interaction among fans as well as between the fans and the artist.

28

1           5. The fan club policy also provides that member registration should  
2 precede access to any of the member-only benefits (including access to tickets); the  
3 fan club must be the only official fan club for the artist; the fan club must be easily  
4 found via search engines for sign-up/registrations, even when an artist is not  
5 currently touring; the fan club and the specific benefits of membership must be  
6 prominently featured on the artist's official web page; the fan club must mention  
7 access to presales as only one of many significant benefits to fan club membership;  
8 the fan club must provide its members a password and member ID that is unique to  
9 each member, and must be used to gain access to the fan club-only sections,  
10 ticketing pages, and other content on the fan club website; and the fan club must  
11 require each fan club member to provide personal information, beyond merely an  
12 email address and password, in order to become a member.

13           6. At its core, the fan club policy is straightforward: in order to do an  
14 off-platform presale at a Ticketmaster venue, a fan club must exist beforehand,  
15 must provide benefits to its members well beyond ticketing access, and must put  
16 steps in place that prospective members must go through to demonstrate that they  
17 are true members of an artist's most devoted community—and not simply  
18 members of the general public (or brokers) looking to buy tickets.

19           7. If a fan club satisfies the necessary requirements, Ticketmaster allows  
20 artists to run a presale on a ticketing platform other than Ticketmaster's—only to  
21 members of the fan club—subject to certain requirements. First and foremost,  
22 ticket sales may not be made to the general public. That is the core purpose of our  
23 business decision to help artists conduct presales: Ticketmaster is giving them the  
24 means to offer a special perk to their biggest fans, not to everyone in the world.  
25 Related requirements, all driven by the same idea, include: (i) ticket distribution  
26 must occur through an artist or fan club branded, password-protected, members-  
27 only website (no branding by a third-party ticketing services provider);  
28 (ii) inventory is limited to 8% of sellable seats, and must be spread evenly among

1 all price levels within the venues; (iii) dates and times of the fan club presales may  
2 only be visible to, and accessible by, registered fan club members; (iv) there can be  
3 no “presale” or “register” buttons visible next to any Ticketmaster event until a fan  
4 has logged into their unique fan club account; (v) the number of tickets purchased  
5 per member must be limited to four per performance; and (vi) the presale must end  
6 prior to the general public sale for the event, at which point the presale must be  
7 disabled, and all unsold inventory returned to venue box offices.

8 8. Collectively, Ticketmaster’s fan club policy allows artists access to a  
9 limited slice of the ticketing inventory that otherwise would be sold by  
10 Ticketmaster to the broader public via Ticketmaster ticketing systems, provided  
11 that the tickets are sold by the artist via a qualifying fan club (and not just a  
12 disguised web-based ticketing site).

13 9. [REDACTED] is an illustrative example of an artist who has a fan club  
14 which qualifies under Ticketmaster’s fan club policy. [REDACTED] fan club (the  
15 [REDACTED]) is prominently featured on the artist’s website,  
16 easily found via search engines, and clearly provides for meaningful, ongoing  
17 interactions between the artist and his fans that go beyond merely making tickets  
18 available. For example, beyond making tickets available, [REDACTED] fan club  
19 provides a number of specific, exclusive benefits to members—including, for  
20 example, audio downloads, merchandise, fan forums, and giveaways—that are  
21 available in a password-protected, members-only area on the artist’s website. [REDACTED]  
22 [REDACTED] fan club is also a paid fan club, meaning that members must pay a fee to  
23 join the club. Paid membership typically indicates that the fan club has clear value  
24 beyond the sale of tickets. It is worth noting, however, this is not a requirement  
25 under Ticketmaster’s policy; a fan club does not need to be a paid fan club in order  
26 to qualify under the policy.

27 10. On or about February 21, 2017, I visited [REDACTED] website and  
28 joined the fan club. Attached hereto as Exhibit 1 is a document containing screen

1 shots that show the various aspects of the fan club, along with my explanation of  
2 why Ticketmaster has determined that this is a qualifying fan club under the  
3 policy.

4 11. On many occasions, Ticketmaster determined that an artist presale  
5 that Songkick was planning to conduct (or had already commenced) was  
6 impermissible because the artist lacked a qualifying fan club, and/or because the  
7 presale otherwise did not comply with the fan club policy's requirements.  
8 Ticketmaster usually prohibits Songkick from conducting these non-compliant  
9 presales. Sometimes, however, Ticketmaster in its discretion will give a one-time  
10 exception for Songkick to conduct a non-compliant presale, usually because I or  
11 my team discovered the presale in the days immediately prior to its on-sale date, or  
12 while the presale was already ongoing, such that it was impractical or impossible  
13 to halt the sale. As we grew more accustomed to this tactic, Ticketmaster also  
14 began to give Songkick the option of conducting some non-complaint presales, but  
15 only if Songkick reimbursed Ticketmaster for the service fees that Ticketmaster  
16 and the venue would have earned from selling the presale tickets.

17 12. Songkick often proceeds with its non-compliant presales at  
18 Ticketmaster venues, despite being informed by Ticketmaster that those presales  
19 are impermissible because the artist lacked a qualifying fan club, and/or because  
20 the presale otherwise did not comply with the fan club policy's requirements. For  
21 example, Songkick has run non-compliant presales for [REDACTED]  
22 [REDACTED] and [REDACTED] At the time(s)  
23 that Songkick conducted those presales, these artists did not have qualifying fan  
24 clubs. And even today, these artists' websites do not host a remotely *bona fide* fan  
25 club.

26 13. [REDACTED] Songkick hosted a number of non-compliant presales for  
27 [REDACTED] in 2015 at Ticketmaster venues. Those presales were non-compliant  
28 because (i) the artist clearly did not have a fan club, and (ii) they exceeded 8% of

1 the sellable capacity at Ticketmaster venues. [REDACTED] did not have a fan club in  
 2 2015: there was no fan club on the artist's website, and I was unable to locate an  
 3 official fan club using search engines. Also, I recently (on or about May 25, 2017)  
 4 went to [REDACTED] website, and confirmed that she does not have anything  
 5 resembling a *bona fide* fan club today. Attached hereto as Exhibit 2 is a document  
 6 containing screen shots that show [REDACTED] website, as it looked when I viewed it on  
 7 or about May 25, 2017, along with an explanation of what I saw on the website.  
 8 With respect to whether the artist has a fan club, [REDACTED] website is substantially  
 9 the same as it was in in 2014 and 2015—i.e., there is no fan club.

10 14. [REDACTED] Songkick hosted a number of non-  
 11 compliant presales for [REDACTED] in 2015 at Ticketmaster  
 12 venues—despite the fact that I had informed Songkick that this artist did not have a  
 13 fan club, and thus could not conduct off-platform presales at Ticketmaster venues.  
 14 [REDACTED] did not have a fan club in 2014 or 2015: there was  
 15 no fan club on the artist's website, and I was unable to locate an official fan club  
 16 using search engines. Also, I recently (on or about May 25, 2017) went to this  
 17 artist's website, and confirmed that [REDACTED] does not have  
 18 anything resembling a *bona fide* fan club today. Attached hereto as Exhibit 3 is a  
 19 document containing screen shots that show [REDACTED]  
 20 website, as it looked when I viewed it on or about May 25, 2017, along with an  
 21 explanation of what I saw on the website. With respect to whether the artist has a  
 22 fan club, the artist's website is substantially the same as it was in in 2014 and  
 23 2015—i.e., there is no fan club.

24 15. [REDACTED] Songkick hosted a number of non-compliant presales for  
 25 [REDACTED] in 2015 and 2016 at Ticketmaster venues—despite the fact that I had  
 26 informed Songkick that this artist did not have a fan club, and thus could not  
 27 conduct off-platform presales at Ticketmaster venues. [REDACTED] did not have a fan  
 28 club in 2015 or 2016: there was no fan club on the artist's website, and I was



1 unable to locate an official fan club using search engines. Also, I recently (on or  
2 about May 25, 2017) went to [REDACTED] website, and confirmed that the artist does  
3 not have anything resembling a *bona fide* fan club today. Attached hereto as  
4 Exhibit 4 is a document containing screen shots that show [REDACTED] website, as it  
5 looked when I viewed it on or about May 25, 2017, along with an explanation of  
6 what I saw on the website. With respect to whether the artist has a fan club,  
7 [REDACTED] website is substantially the same as it was in in 2015 and 2016—i.e., there  
8 is no fan club.

9 16. [REDACTED] Songkick hosted a number of non-compliant presales  
10 for [REDACTED] in 2015 and 2016 at Ticketmaster venues. Those presales were  
11 non-compliant because (i) the artist clearly did not have a fan club, and (ii) they  
12 were marketed to the general public, in violation of the policy. [REDACTED] did  
13 not have a fan club in 2015 or 2016: there was no fan club on the artist's website,  
14 and I was unable to locate an official fan club using search engines. Also, I  
15 recently (on or about May 25, 2017) went to [REDACTED] website, and  
16 confirmed that the artist does not have anything resembling a *bona fide* fan club  
17 today. Attached hereto as Exhibit 5 is a document containing screen shots that  
18 show [REDACTED] website, as it looked when I viewed it on or about May 25,  
19 2017, along with an explanation of what I saw on the website. With respect to  
20 whether the artist has a fan club, [REDACTED] website is substantially the same  
21 as it was in in 2015 and 2016—i.e., there is no fan club.

22 17. [REDACTED] Songkick hosted a non-compliant presale for Home Free  
23 in 2015 at a Ticketmaster venue—despite the fact that I had informed Songkick  
24 that this artist did not have a fan club, and thus could not conduct off-platform  
25 presales at Ticketmaster venues. [REDACTED] did not have a fan club in 2015: there  
26 was no fan club on the artist's website, and I was unable to locate an official fan  
27 club using search engines. Also, I recently (on or about May 25, 2017) went to  
28 [REDACTED] website, and confirmed that the artist does not have anything




1 resembling a *bona fide* fan club today. Attached hereto as Exhibit 6 is a document  
 2 containing screen shots that show [REDACTED] website, as it looked when I  
 3 viewed it on or about May 25, 2017, along with an explanation of what I saw on  
 4 the website. With respect to whether the artist has a fan club, [REDACTED] website  
 5 is substantially the same as it was in in 2015—i.e., there is no fan club.

6 18. [REDACTED] Songkick hosted a number of non-compliant presales for  
 7 [REDACTED] in 2015 at Ticketmaster venues. Those presales were non-compliant  
 8 because (i) the artist clearly did not have a fan club, and (ii) they were not  
 9 password-protected, as required by the policy. [REDACTED] did not have a fan club  
 10 in 2015: there was no fan club on the artist's website, and I was unable to locate an  
 11 official fan club using search engines. Also, I recently (on or about February 21,  
 12 2017) went to [REDACTED] website, and confirmed that the artist does not have  
 13 anything resembling a *bona fide* fan club today. Attached hereto as Exhibit 7 is a  
 14 document containing screen shots that show [REDACTED] website, as it looked  
 15 when I viewed it on or about May 25, 2017, along with an explanation of what I  
 16 saw on the website. With respect to whether the artist has a fan club, [REDACTED]  
 17 website is substantially the same as it was in in 2015—i.e., there is no fan club.

18 19. Neither I nor anyone else on my team or at Ticketmaster has heard of  
 19 a single instance in which a venue complained to Ticketmaster that it had wrongly  
 20 disallowed an artist presale through a genuine artist fan club.

21 20. Neither I nor anyone else on my team or at Ticketmaster has heard of  
 22 a single instance in which a venue claimed that Ticketmaster's standard contracts  
 23 do not give Ticketmaster rights over artist presales.

24 I declare under penalty of perjury that the foregoing is true and correct.  
 25 Executed on May 25, 2017.

26  
 27   
 28 Mike Schmitt